

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:

NEIGHBORS LEGACY HOLDINGS, INC.
XXX-XX-2791
DEBTOR

CASE NO. 18-33836-H1-11
CHAPTER 11

MARK SHAPIRO, TRUSTEE
OF THE UNSECURED CREDITOR
TRUST OF NEIGHBORS LEGACY
HOLDINGS, INC. AND ITS DEBTOR
AFFILIATES

PLAINTIFF

ADVERSARY PROCEEDING
NO. 20-03016

vs.

CLINT CARTER, M.D., P.A., ET AL
DEFENDANTS

**MOTION TO DISMISS CASE AS TO CLINT CARTER, M.D., P.A. FOR IMPROPER
VENUE PURSUANT TO RULE 12(b)(3) OR IN THE ALTERNATIVE
MOTION TO TRANSFER VENUE AS TO DEFENDANT CLINT CARTER, M.D., P.A.**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, Clint Carter, M.D., P.A., a Defendant and party in interest herein, and files this his Motion to Dismiss or in the Alternative Transfer Venue pursuant to Fed. R. Civ. P. 12(b)(3), incorporated by Bankr. R. Civ. P. 7012.

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

Represented parties should act through their attorney.

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334, and §157.
2. Venue in a proceeding arising under Title 11 or arising in or related to cases under Title 11 is controlled by 28 U.S.C. §1409. In this particular instance, 28 U.S.C. §1409(b) is the effective provision.

3. The Trustee filed this Adversary Complaint on January 24, 2020, and on February 17, 2020 the Trustee filed a First Amended Complaint (doc 4) against seventy-nine defendants, both individuals and corporate entities, seeking to recover money or property of the estate on the grounds that each of the named defendants allegedly received transfers of money from one or more of the fifty-one debtor entities in amounts ranging from \$4,539,281.04 to \$5,281.55. The Defendant, Clint Carter, M.D., P.A., was included in this adversary proceeding.

4. According to Plaintiff's Complaint, the amount alleged to be owed has been transferred to Clint Carter, M.D., P.A., totals \$7,729.20. Pursuant to 28 U.S.C. §1409(b), a claim for less than the amount of \$25,000.00 may only be brought in the district court for the district in which the defendant resides. Clint Carter, M.D., P.A. does not reside in the Southern District of Texas, rather it resides in the Eastern District of Texas in Smith County, Texas.

5. The Plaintiff admits that Clint Carter, M.D., P.A., is a resident of Tyler, Smith County, Texas.

6. As the Plaintiff has admitted, the claim against Clint Carter, M.D., P.A., is \$7,729.20 and that Clint Carter, M.D., P.A., resided in Smith County, Texas. Movant would show that venue is only proper in the District Court for the Eastern District of Texas.

7. 28 U.S.C. §1406(a) provides: (a) The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfers such case to a division in which it could have been brought.

WHEREFORE, PREMISES CONSIDERED, Clint Carter, M.D., P.A., would request that this Court enter an order dismissing the case pursuant to Rule 12(b)(3) and 28 U.S.C. § 1406(a) or transferring venue from the Southern District of Texas to the Eastern District of Texas where such venue is proper.

Respectfully submitted,

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BY:


CHARLES E. LAUFFER, JR.
STATE BAR NO. 11989400

CERTIFICATE OF CONFERENCE

The undersigned attorney certifies that the offices of Clifford Walston, counsel for Debtor, were contacted on June 26, 2020 , and a good faith effort was made to negotiate a settlement of the dispute with Debtor's counsel. It is believed that the motion will be OPPOSED.

DATE: June 30th, 2020.


CHARLES E. LAUFFER, JR.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was mailed by United States mail, postage prepaid and/or electronic means, to:

Clifford Walston
4299 San Felipe Street
Suite 300
Houston TX 77027

and the attached mailing matrix on this the 30th day of June, 2020.


CHARLES E. LAUFFER, JR.